

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEBRASKA

PRISM TECHNOLOGIES, LLC,)	
)	
Plaintiff,)	8:12CV124
)	
v.)	
)	
T-MOBILE USA, INC.,)	ORDER
)	
Defendant.)	
_____)	

This matter is before the Court on defendant T-Mobile U.S.A.'s ("T-Mobile") motion for leave to serve a supplemental expert report (Filing No. [312](#)). T-Mobile filed an accompanying brief (Filing No. [313](#)) and index of evidence in support of its motion (Filing No. [314](#)). The plaintiff Prism Technologies ("Prism") filed a brief in opposition (Filing No. [318](#)) to which the defendant replied (Filing No. [334](#)). After reviewing the motion, briefs, and applicable law, the Court finds as follows.

Background

Prism accuses T-Mobile, and other carrier defendants, of patent infringement. On July 30, 2013, this Court issued its *Markman* order construing the claims involved with this case. One of the many claims the Court defined was "protected computer resources." (Filing No. [138](#) at 48). "Protected computer resources" are "Computer services, applications, or content that is stored within the secure transaction system that can only be

accessed by a server within the secure transaction system.”
(*Id.*).

T-Mobile moves for leave to serve a supplemental expert report. Prism’s expert, Dr. David Lyon, testified at both the AT&T and Sprint trials that providing access to the Internet is a “protected computer resource.” T-Mobile and its expert, Mr. James Proctor, allege that Dr. Lyon’s testimony about the internet was rejected by the Court in the *Markman* claim construction. T-Mobile seeks to serve a supplemental expert report based on the “new information” that Dr. Lyon testified to at the Sprint trial.

Law

Federal Rule of Civil Procedure 26(e) provides that a party has a duty to supplement its expert report in a timely manner when the party obtains additional information or learns that in some material respect the disclosure or response is “incomplete or incorrect.” Fed.R.Civ.P. 26(e)(1)(A). Permissible supplementation under Rule 26(e) “means correcting inaccuracies, or filing the interstices of an incomplete report based on information that was not available at the time of the initial disclosure.” *Keener v. United States*, 181 F.R.D. 639, 640 (D.Mont.1998).

Discussion

Prism opposes T-Mobile's motion to serve a supplemental expert report. Prism makes two arguments. First, that Dr. Lyon's testimony regarding "protected computer resources" is not a new development that requires a supplemental report. Second, Prism states that this Court has already addressed this argument in a previous order in the *Prism Techs. LLC v. AT&T Mobility LLC* case (Filing No. 419 in 8:12CV122). T-Mobile argues that supplementation is necessary for its invalidity defense and the report would not prejudice the plaintiff.

T-Mobile argues that the Court's construction of "protected computer resources" excluded Internet access. Therefore, Prism's expert Dr. Lyon's testimony at trial that Internet access is within the construction of "protected computer resources" was improper. T-Mobile alleges that its expert Mr. Proctor should be able to supplement his opinion on invalidity due to "new information" on the claim construction.

The Court has already addressed T-Mobile's theory in a previous order (See Filing No. 419 in 8:12CV122). Once again, the Court finds nothing in the *Markman* claim construction, express or implied, that excludes internet access from the claim. Dr. Lyon's testimony that internet access is within the construction of "protected computer resource" is not new

information that requires supplementation under Rule 26(e). As a result, the Court will deny the defendant's motion for leave to serve a supplemental expert report. Accordingly,

IT IS ORDERED that T-Mobile's motion for leave to serve a supplemental expert report is denied.

DATED this 8th day of September, 2015.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court